CF0000064291

IN THE HIGH COURT OF JUDICATURE AT JABALPUR.(MP).

Criminal Appeal No: 2247 /2000

(9451)

Filed on 4/9/2000
by Shri U. Shankaran Advocate
Pltr. A.R.

APPELLANT (IN JAIL) : Buddha Ram @ Nirmal S/o. Tijaoo Satnami, Aged about 32 years, R/o. Tumhani,P.S. Bilaiganj, Distt- Raipur. (MP).

VERSUS

RESPONDENT : The State of Madhya pradesh Through R.P.Kendra Bilaigarh, Distt.- Raipur(MP).

APPEAL UNDER SECTION 374(2) OF CR.P.C.

(40)

HIGH COURT OF CHHATTISGARH : BILASPUR

CRIMINAL APPEAL NO. 2247 OF 2000

Buddha Ram @ Nirmal

Vs.

State of Madhya Pradesh
(Now Chhattisgarh)

(41)

HIGH COURT OF CHHATTISGARH : BILASPUR

CRIMINAL APPEAL NO. 2247 OF 2000

Buddha Ram @ Nirmal

Vs.

State of Madhya Pradesh
(now Chhattisgarh)

CORAM :- **HON'BLE SHRI FAKHRUDDIN, J &**
HON'BLE SHRI DHIRENDRA MISHRA, J

Present :- Shri Devesh Chandra Verma, counsel for the appellant.
Shri D.K. Gwalre, Dy. Govt. Adv. for the State.

Per Fakhruddin, J

J U D G M E N T

Heard learned counsel for the parties.

2. The appellant has preferred this appeal against the judgment dated 19-7-2000 passed in S.T.No.185/99 by the Second Additional Sessions Judge, Baloda Bazar, whereby he has been convicted under Section 302 of the Indian Penal Code for causing murder of Bhanu on 12-3-1999 and sentenced to undergo imprisonment for life and fine of Rs.5000/- and in default of payment of fine, simple imprisonment for one year.

3. Briefly stated the prosecution story is that Chaitram PW-1 and Bhanu both were doing the business of purchase and sale of ox and buffaloes and they were partners in the business. On 11-3-1999 at about 6.30 a.m., the complainant and Bhanu went to sale the ox to Bilaigarh. They stayed in the house of Tijauram. On 12-3-1999, Chaitram and Bhanu were grazing the ox in the field. At about 9.00 in the morning Budhram alias

Nirmal armed with hammer in the hand came to Bhanu and pushed him and fell down him and gave 3 – 4 hammer blows on his chest. The complainant saw it and when he persuaded him not to do, the accused tried to assault him. As a result of hammer blows, Bhanu died. Chaitram lodged the report Ex.P/1 at about 10.10 a.m. which was recorded by S.L. Chouhan. In the report Budhram has been named as assailant. Then merg Ex.P/2 was recorded. Police went to the spot and preferred spot map. Panchnama Ex.P/4 was prepared. Memorandum of accused Ex.P/5 was recorded and a hammer was seized vide Ex.P/6. The dead body was sent for autopsy and Dr. Narayan Singh conducted autopsy and submitted autopsy report Ex.P/13. According to the report, cause of death was shock due to excessive bleeding.

4. After investigation challan was filed and charge was framed. The appellant abjured the guilt and contended that he has been falsely implicated.

5. Learned Court below after hearing the counsel for the parties and appreciating the evidence, found the appellant guilty and convicted and sentenced him as stated above.

6. Shri Verma, learned counsel for the appellant, assailed the conviction on the ground that there is no legal and reliable evidence on record. He contended that evidence of PW-1 Chaitram and PW-6 Pramod Tiwari is not trustworthy and there are discrepancies in their versions.

7. Learned counsel for the State, on the other hand, supported the judgment and findings.

8. Homicidal death of the deceased is not in dispute. P.W. 10 Dr. Narayan Singh performed autopsy on the dead body and submitted autopsy report Ex. P-13. He found that there was an injury on the right side of the forehead. First finger of right hand was broken near palm. There was swelling in the entire chest and it was bluish. There was abrasion in his right palm. Ribs were broken. The doctor opined that the above injuries were ante mortem and the injuries of Ribs are serious in nature. The cause of death is shock due to excessive bleeding. Therefore, the homicidal death of the deceased is established.

9. The conviction in this case is based on eyewitness account of PW-1 Chaitram and PW-6 Pramod Tiwari. P.W. 1 Chaitram is the person who was companion of the deceased and both of them had gone to the village. He has stated that when they were grazing ox and buffaloes at village Duhani, accused Budhram came to Bhanuram and assaulted on his chest by hammer. When she persuaded him not to do, Budhram also chased him to beat. Bhanu died on spot. He went to the Police Station, Bilaigarh and lodged FIR Ex.P/1. He further stated that Police went to the spot and issued summon for panchnama and he is witness of Ex.P/3. In cross-examination, he stated that he and deceased were there at the place where the incident occurred and no other was there. He

and Bhanu were 200 meters away from each other. He was grazing two oxen and Bhanu was grazing four oxen. Chaitram and Bhanu both are co-brother-in-law and were doing the business. He has denied that there was any dispute between them. He did not inform to the Kotwar but instantly went to police station. When he was suggested that because of dispute between him and deceased, he has killed the deceased and implicated the accused because he stopped him and that is why he did not give any information to Kotwar and directly informed about the incident to the Police, he denied this suggestion.

10. PW-6 Pramod Tiwari is another eyewitness to the incident. In his evidence, he stated that in the morning at 6.30 hrs. he went to village Dumari. While he was going to Bilaigarh, he saw that Budhram assaulted Bhanu by hammer. He saw him beating thrice by hammer. Shrawan who is brother-in-law of Budhram was there. When Shravan asked something to Budhram, he chased him. Then he (PW-6) came to Bilaigarh on his motorcycle and informed about the incident to Koslesh Dubey. This witness has also been cross-examined. In cross-examination, this witness has stated that he was alone on the motorcycle. He saw Shravan on the place of incident and nearby other persons were there but he does not know them. He knows Budhram since long and he had worked with him. He stated that he knew Bhanu since last two years. He used to come to take payment. He further stated that he had no

dealings with Bhanu. He stated that as soon as Bhanu was beaten by hammer, he fell down. He has denied the suggestion that the offence was committed by Shravan and he has seen Budhram doing the offence. He stated that he knows Shravan. He further stated that he had seen three assaults and then he went on his motorcycle. He further stated that he has no enmity with the accused. PW-13 Koslesh Dubey has also stated that he was at his home. Pramod Tiwari came to him and told that a murder has taken place near Duhani Road and Budhram has killed a person by hammer. Pramod asked to give information to Police Station and he went to Police Station with Pramod and informed about it. P.W. 10 Dr. Narayan Singh conducted autopsy on the dead body and found that cause of death was shock due to excessive bleeding and it was caused intentionally. We have gone through the evidence of these two eyewitnesses and P.W. 13 Koshlesh Dubey. Their version is categorical and there is nothing to discredit it.

11. Learned counsel for the appellant also contended that there are discrepancies regarding seizure and recovery of hammer. The minor discrepancies here and there are bound to occur. They are natural and show that the witnesses have not been tutored. Apart from that, in a case like this, where there is eyewitness account and which has been relied upon, minor discrepancies do not affect the prosecution story.

12. So far as offence under Section 302 of I.P.C. is concerned, from the medical evidence of Dr. Narayan Singh P.W. 10 and autopsy report Ex. P-13, it is clear that injuries were caused intentionally to kill. Ribs were cut and injuries of ribs were serious. The nature of injury caused to the deceased, place of body where injuries have been caused and the weapon used by the appellant which is a hammer, clearly establish the intention of the appellant to kill Bhanu. Having given our thoughtful consideration, in the opinion of this Court, the trial Court was justified in convicting the appellant for offence punishable under Section 302 of I.P.C.

13. The conviction is well merited and the appeal is devoid of force and accordingly the appeal is dismissed.

Sd/-
Fakhruddin
Judge

Sd/-
DHIRENDRA MISHRA
Judge

Pathak